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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,837	09/15/2003	Michael J. McRoberts	CW 2563	8541

7590 10/18/2005

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EXAMINER

RUNNING, RACHEL A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,837

Applicant(s)

MCROBERTS, MICHAEL J.

Examiner

Rachel A. Running

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8 and 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, the embodiment of the hook that is attached to the back of the base support unit shown in Figures 7-8.

Species II, the embodiment of the hook that is attached to the back of the base support unit shown in Figures 10-12.

Species III, the embodiment of the hook that is attached to the back of the base support unit shown in Figures 13-15.

Species IV, the embodiment of the hook that is attached to the back of the base support unit shown in Figures 21-32.

Species V, the embodiment of the hook that is attached to the back of the base support unit shown in Figures 33-35.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1,2,5,6,9-15 are generic.

2. Applicant's election with traverse of Species I in the reply filed on August 27, 2005 is acknowledged. The traversal is on the ground(s) that the species are closely related and are merely different embodiments of the same invention. This is not found persuasive because species are deemed independent inventions when there is no disclosure of relationship between them see MPEP 805.01 (a). As such, restriction

between independent inventions is deemed proper unless there is no patentable difference between them. In this instance, while applicant argues that they are closely related and merely different embodiments of the same invention, applicant has not provided any evidence to show that the species are not patentably distinct or admitted on record that the differences are obvious variants.

The requirement is still deemed proper and is therefore made FINAL. Claims 7, 8, and 16-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 27, 2005.

Information Disclosure Statement

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

4. The disclosure is objected to because of the following informalities: the headings should not be underlined, the U.S. Patent number on page 2, line 23 does not appear to be a "Hair Accessory". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 9-15 are rejected under 35 U.S.C. 103(a) as being anticipated by "Sterling Ponytail Hair Cuffs and Hair Ties" (<http://web.archive.org/web/20020122082630/http://www.copperbracelets.com/>) (here after referred to as Sterling Hair Ties) in view of Edmark U.S. Patent No. 5,355,698. Sterling Hair Ties discloses a hair-fastening device that comprises a flexible anchor ring, i.e. "the elastic you normally wear on your ponytail," for holding strands of hair, a decorative device having a front and back attached, and a hook on means for removably attaching the anchor ring. The hook on means of Sterling Hair Ties has a reversed R-configuration in the cross section as seen in the figures. The ornamental unit resembles an oval shaped tree as seen in the figures. The Sterling Hair Ties however, does not disclose a base support unit having a front side that contains a female snap on unit, and the ornamental side containing a male snap on unit. Edmark teaches an interchangeable decorative ornament (10) comprising a decorative piece (14) having a front and back attached to a base support unit (20) having a front and back, and a hook on means (18) see Figure 1 (column 2, lines 38-45). Edmark also teaches a snap on means comprising a female snap on unit (28) for the ornamental side (14) and male snap on unit (30) for the base

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support (20) the ornamental unit and base support unit are integrated to form a single unit see Figure 1. It would have been obvious to one skilled in the art at the time the invention was made to take the hair decorative device of Sterling Hair Ties and make the ornamental unit interchangeable by adding a support base with female and male snap on means as taught by Edmark in order to interchange decorative ornamental units as desired by the user. Regarding claims 12-14, it would have been obvious to one skilled in the art at the time the invention was made to make the snap unit of Edmark T-shaped because they are functional equivalents. Regarding claims 12-14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add another T-shaped flexible shaft that is spaced apart and parallel to the first T-shaped shaft since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ

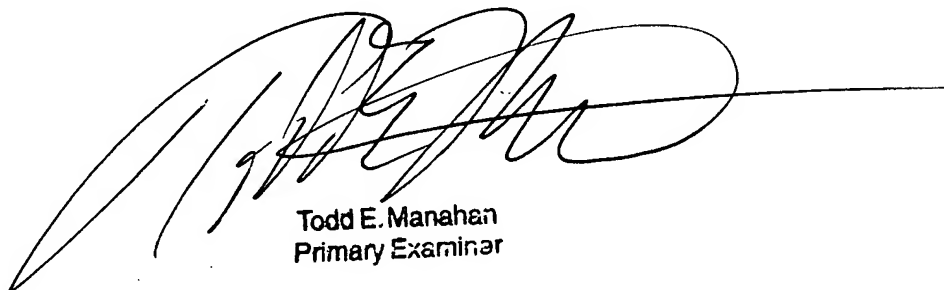
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAR
RAK



Todd E. Manahan
Primary Examiner